



**BOARD OF APPEALS**  
Diane R. Gordon, Co-Chair  
Harry Miller, Co-Chair  
Bailey S. Silbert

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA 070024

Petitioner, Brian Potts applied to the Board of Appeals for zoning relief to construct an addition including sundeck to the rear of their home as well as a new two car garage and driveway. Their home is located at 64 Spooner Road.

On April 5, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed May 10, 2007 at 7:30 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published April 26 and May 3, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEALS  
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **Brian J. POTTS**

Location of Premises: **64 SPOONER ROAD BRKL**

Date of Hearing: **05/10/2007**

Time of Hearing: **07:30 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup>. Floor**

A public hearing will be held for a special permit and/or variance from:

- 1) **Table of Use Regulations, Use #54; Variance Required. Use #55; Special Permit Required.**
- 2) **5.09.2.j, Design Review; Special Permit Required.**
- 3) **5.22.3.b.1.b, Exceptions to Maximum Floor Area Ratio: Special Permit Required.**
- 4) **5.20, Floor Area Ratio; Variance Required**
- 5) **5.43, Exceptions to Yard and Setback Regulations; Special Permit Required.**
- 6) **5.71, Projections into Rear Yards; Variance Required.**
- 7) **5.72, Projections into Rear Yards; Variance Required.**
- 8) **For the Design of All Off-Street Parking Facilities:**
  - 6.04.2.f, Variance Required.**
  - 6.04.3, Special Permit Required.**
  - 6.04.4.f, Variance Required.**
  - 6.04.5.c.1, Variance Required.**
  - 6.04.5.c.2, Variance Required.**
  - 6.04.5.c.4, Variance Required.**
  - 6.04.9.b, Variance Required.**
  - 6.04.12; Special Permit Required.**
- 9) **8.02.2; Alteration or Extension; Special Permit Required, of the Zoning By-Law to construct an addition, sundeck, new garage with a separate driveway and to extend the existing driveway per plan at 64 SPOONER RD BRKL.**

Said Premise located in a S-10 District.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Diane R. Gordon  
Harry Miller  
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At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing was Chair, Diane Gordon and Board members Enid Starr and Lawrence Kaplan. Mr. Potts, the petitioner, presented his case before the Board with the assistance of his architect Richard Shepard, R.A. of S/Q Design Associates, 300 Horseneck Road, South Dartmouth, MA.

Mr. Potts described his neighborhood as residential and part of the Chestnut Hill North Local Historic District. He described his project as a single-story addition and deck to the rear of his three-story, single family home. He is also planning to build a detached, two-bay garage with new driveway to the left of the home. The petitioner stated that when he initially applied for a building permit he intended to extend the existing driveway to the right of the home as well as the new one. After listening to concerns from the Planning Board as well as those of his neighbors and the Preservation Commission he decided to eliminate the existing driveway and restore that area. Therefore, he said, a lot of the relief cited by the Building Department is no longer required. He stated that he had been before the Preservation Commission with the plan and they were very supportive. Over the years the back of his home has been subject to several "improvements" and the Commission looked upon the current proposal as cleaning up the current cluttered appearance of the rear of the home. Mr. Potts also stated that the Commission was happy with the design of the new garage in that it fit in style and scale with the home. Mr. Shepard mentioned that during the Planning Board hearing there was extensive discussion on the design of the new driveway and its impact on the environment. He stated that there were large, well established plantings along the left property line that could be affected by the location of the driveway. Initially the driveway was planned to be 18 feet wide from the street to the new garage. Mr. Shepard presented a new plan dated 5 May 2007, showing the driveway to be 12 feet wide in an attempt to ameliorate the concerns regarding the impact on vegetation. With this design Mr.

Shepard said that it would be difficult to turn-around in the driveway and exit onto Spooner Road front-first. Mr. Potts mentioned that most of the neighbors have a similar issue and often back into their driveway or use extra caution on exiting their drives.

The Chair asked whether anyone wished to speak in favor or in opposition to the proposal and Mr. John G. Nimick of 56 Spooner Road, the abutter on the left, stated that he was neither in favor nor in opposition to the petitioner's proposal. He stated that he appreciated the pro-active approach by Mr. and Mrs. Potts to address his concerns. Mr. Nimick mentioned that his kitchen overlooks the proposed location for the new garage and he has concern relative to the effect the construction will have on the trees along his lot line. Mr. Nimick stated that he liked the lower profile offered by the new driveway plan and offered that the neighborhood in general would appreciate the smaller width. As far as turning around in the driveway, Mr. Nimick stated that most of the neighbors back onto Spooner and use caution. Citing a case involving 71 Spooner Road, currently in litigation, he stated that the neighborhood is extremely sensitive to change which may in any way set a precedent. The Chair then read into the record a letter dated May 3, 2007 from Ms. Margret Homans, a neighbor three doors down from the petitioners property. Ms. Homans stated that while she regrets disagreeing with Mr. And Mrs. Potts regarding their project she has concern about the width of the proposed driveway, 17.5 feet, and the required cutting of vegetation and change of topography and its impact on the neighborhood. She understood that the Potts family had no room in the area of the existing drive but thought it would be better for the neighborhood as a whole if they could manage without making this conspicuous change.

Planner, Lara Curtis, then reviewed the comments and recommendations of the Planning Board. She stated that the applicant proposes to construct a single-story rear addition and deck, new detached

two-bay garage and driveway, and extend the existing driveway further towards the rear property line. The addition would be 24.7 feet wide and “fill in” a section at the rear of the house. The addition would provide approximately 214 sq. ft. of floor area and be used as a breakfast room and mud room. The rear wall of the addition would have four large windows, and a new door would provide access to a rear deck. The addition would be finished in stucco and painted to match the dwelling. A new deck would be constructed at the rear of the dwelling, replacing the existing deck. The new deck would be wood, extend the width of the building, and be 30 inches above grade. Stairs on either side of the deck would provide access. The applicant is also proposing to construct a new two-bay detached garage in the left rear corner of the lot, approximately 6 feet from the side and rear lot lines. The garage would be 22 feet by 22 feet and have a gabled roof. The garage would have one window on each side wall, a front window at the loft level, a side pedestrian door, and two wood-paneled garage doors in front. The garage would be located approximately 12 feet to the left and rear of the dwelling. The garage would also be finished in stucco and painted to match the existing dwelling. A new asphalt driveway approximately 17.5 feet wide at the street lot line would provide vehicular access to the new garage. The existing driveway on the right side of the dwelling would be extended approximately 57 feet towards the rear lot line so that it aligns with the new deck stairs. *Note: This was before change to 12 foot width dated 5-5-07 and agreement to eliminate existing driveway).* Finally, a new bulkhead would be constructed on the right side of the house to provide exterior access to the basement. Currently, that access is provided through a separate door at the rear. Ms. Curtis described the zoning relief as follows:

**Section 4.07 – Table of Use Regulations – Use #54:** An accessory private garage or parking area for non-commercial motor vehicles with not more than three spaces per dwelling unit, except that there may be four spaces for a single-family dwelling on a 10,000 s.f. or larger lot. *The submitted plans indicate two parking spaces on the lot.*

**Section 4.07 – Table of Use Regulations – Use #55:** Other private garage or parking for more non-commercial motor vehicles than permitted in Use #54. *The submitted plans indicate two parking spaces on the lot, therefore this application does not fall under this use category.*

**Section 5.20 – Floor Area Ratio**

**Section 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio Regulations for Residential Units**

	<u>Allowed By Right</u>	<u>Allowed By Special Permit</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
<b>Floor Area Ratio (F.A.R.)</b>	0.30 (100%)	0.36 (120%)	0.32 (106%)	0.337 (112%)	<u>Special Permit*</u>
<b>Floor Area (s.f.)</b>	3,579	4,295	3,810	4,024	--

\* Under Section 5.22.3.b.1.b, the Board of Appeals may allow by special permit an exterior addition up to 120% of the permitted gross floor area.

**Section 5.09.2.j – Design Review**

Exterior additions to existing structures for which a special permit is requested pursuant to *Section 5.22 Exceptions to Maximum Floor Area Ratio Regulations for Residential Units* require a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. The most relevant sections are described below:

- a. *Preservation of Trees and Landscape:* The proposed addition will extend slightly from the rear of the existing dwelling above space currently used as a deck. Therefore, the addition will not entail the removal of trees or landscaping.
- b. *Relation of Buildings to Environment:* The proposed addition is designed to integrate well with the existing dwelling, with substantial windows and the same exterior finishing. The addition is relatively small, and should not negatively impact neighboring buildings.
- j. *Heritage:* The dwelling is located in the Chestnut Hill North Local Historic District. The addition would not be easily visible from Spooner Road and would not detract from the existing dwelling's style or character. The Preservation Commission must approve any exterior changes to the dwelling.

**Section 5.71 – Projections into Rear Yards:** Projections from a dwelling must not be within 8 feet of an accessory building. The applicant has indicated the eaves of the dwelling will project at most 2 feet from the dwelling's exterior wall, and the eaves of the garage would project at most 2 feet from the garage's exterior wall. The distance between these two eaves is estimated to be approximately 8 feet, based on the surveyed site plan.

**Section 5.72 – Accessory Buildings or Structures in Rear Yards:** Accessory buildings or structures may occupy up to 25 percent of the required rear yard provided the building or structure does not exceed 15 feet in height nor is located closer than 6 feet to any side or rear lot line, nor located closer than 6 feet to a principal building.

	<b><u>Required</u></b>	<b><u>Existing</u></b>	<b><u>Proposed</u></b>	<b><u>Finding</u></b>
<b>Rear Yard Setback (dwelling)</b>	30 feet	31 feet	30.1 feet	Complies
<b>Rear Yard Setback (deck)</b>	Rear yard setback does not apply to uncovered porches or steps not over 3 feet above the ground floor	27 feet	15.7 feet	Complies
<b>Garage Setback</b>	<u>Side setback</u> : 6 feet <u>Rear setback</u> : 6 feet <u>From dwelling</u> : 6 feet	n/a	<u>Side setback</u> : 6 feet <u>Rear setback</u> : 6 feet <u>From dwelling</u> : 8 feet to 12 feet	Complies
<b>Garage Ground Coverage</b>	No more than 25% of rear yard (2,914 s.f.)	n/a	17% (484 s.f.)	Complies**

\*\* Since the proposed deck is attached to the main dwelling, it should be considered part of the lot's principal use and therefore does not contribute to the total rear yard coverage for accessory structures.

**Section 6.04 – Design of All Off-Street Parking Facilities**

- .2.f – Parking lots shall not be designed to require cars to back into a public way to exit
- .3 – Parking lots shall allow each vehicle to enter/exit without moving another vehicle
- .4.f – Entrance and exit drives shall be designed for maximum pedestrian and vehicular safety
- .5.c.1 – Front yard setback
- .5.c.2 – Side yard setback
- .5.c.4 – Setback from all lot lines for a parking lot with more than six vehicles
- .9.b – Driveways shall be graded, surfaced and drained to the satisfaction of the Building Commissioner
- .12 – Allows substitution of other dimensional requirements for new parking facilities serving existing structures

	<b><u>Required</u></b>	<b><u>Existing</u></b>	<b><u>Proposed</u></b>	<b><u>Finding</u></b>
<b>Parking spaces</b>	Max: 4 spaces	2 spaces	2 spaces shown on plan	Complies
<b>Side yard setback (drive extension)</b>	5 feet	1 foot to 4 feet	4.5 feet	Variance / Special Permit†
<b>Front yard setback (drive extension)</b>	40 feet	Not marked on plan; existing drive is approx. 45 feet long	Not marked on plan; drive would be approx. 102 feet	Complies
<b>Side yard setback (new driveway)</b>	5.8 feet	n/a	8 feet	Complies
<b>Front yard setback (new driveway)</b>	40 feet	n/a	99 feet	Complies

† Under Section 5.43, the Board of Appeals may waive yard and setback requirements if the applicant provides a counterbalancing amenity.

**Section 8.02.2 – Alteration or Extension:** Special permit required for extending the non-conforming setback of the existing driveway and for increasing the dwelling's non-conforming F.A.R.

Ms. Curtis stated that the Planning Board was not opposed to this proposal to build a rear addition, new deck and detached garage with a new driveway, though the site and landscaping plan and the design of the garage need to be refined. The addition is small and has been designed to integrate well with the existing building. It will add floor area to the dwelling without substantially impacting neighboring properties. The proposed deck is not subject to rear and side-yard setback requirements since it is not higher than 3 feet above the ground floor. The new detached garage also complies with setbacks and rear lot coverage requirements for accessory structures. However, the Planning Board does not support two driveways for this single-family dwelling, and the existing driveway should be removed. Extending and maintaining the existing driveway, as proposed with this application, would result in excessive parking and paved area for one dwelling unit. Removing the non-conforming driveway would still allow for sufficient parking on the lot. Additionally, the new driveway should be re-designed to determine a more appropriate location and width, taking into consideration existing landscaping and site features. A landscape architect should be consulted in making this determination. Finally, since this property is located in a local historic district, the Preservation Commission will review and approve the exterior design of the addition, deck and garage. The Planning Board would also like to review and approve the final elevations, as the garage should be re-designed to relate more appropriately with the existing dwelling and its future use. Therefore, the Planning Board recommends the Board of Appeals grant the zoning relief sought by the applicant, and approval of the submitted plans, titled "64 Spooner Road, Brookline, Mass.," prepared by Richard Shepard and last dated 4/20/07, and the submitted site plan, prepared by Bruce Bradford and last dated 2/23/07, in concept only, subject to the following conditions:

1. **Prior to the issuance of a building permit, a final site plan, indicating setbacks for the garage, deck and addition from the appropriate lot lines and other structures on the lot, as well as landscaping and hardscape materials, shall be submitted to the Planning Board for review and approval. The plan shall indicate the removal of the existing drive and curb cut and a revised location for the new driveway. The location of the existing street tree in front of the dwelling also shall be indicated on the plan, or evidence indicating the Tree Planting Committee's approval of the tree's removal, if necessary, shall be submitted.**
2. **Prior to the issuance of a building permit, final elevations of the addition, garage and deck shall be reviewed and approved by the Preservation Commission and the Planning Board.**
3. **Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the addition, garage and deck, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chair called on Frank Hitchcock representing the Building Department. Mr. Hitchcock stated that initially the building permit application was submitted as three phases: the lengthening of the existing driveway, the improvements to the rear of the house and the new garage/driveway. He stated that since the applicants have withdrawn the intentions regarding the old driveway, all the relief required could be granted by special permit. He mentioned that it would be difficult, given the tightness of the site, to accommodate a "hammer head" type turn around in the new driveway. A special permit under Section 5.22.3.b.1.b for an exterior addition up to 120% of the permitted gross floor area, a special permit under Section 5.09.2.j for Design Review and a special permit under Section 8.02.2 for increasing the dwelling's non-conforming F.A.R. is all the relief required under the by-law. Mr. Hitchcock stated that the Building Department had no problem with the requested relief or the conditions proposed by the Planning Board.

The Chair read into the record a memo from the Preservation Commission dated 9 May 2007. The Preservation Commission stated that it "was pleased with the siting and design of the proposed garage

and looked favorably on the design of the modifications to the rear of the house". The Commission continued the case until its next meeting so that details regarding elevations can be completed and plans approved. The Commission noted that they have statutory jurisdiction over the design of buildings in a local historic district and recommended that the Board of Appeals remove the proposed condition of the Planning Board requiring the petitioner to go back before the Planning Board for approval of the elevations of the addition, garage and deck.

The plan of record is "Permit Set" dated 4-20-07 by S/Q Design Associates and amended by "Site Plan" dated 5-5-07 by S/Q Design Associates.

Enid Starr, during deliberations noted that the addition was *de minimis* in nature and the garage appears to comply with zoning regulations. She questioned at 12 feet whether the driveway was wide enough. She said that she agreed with the Preservation Commission regarding who in this case has design authority. Larry Kaplan said that the revised location of the driveway provided for environmentally sensitive construction and that the petitioner should work with the next door neighbor before the submittal of the landscape plan to help ameliorate his concerns.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits under **Section 5.22.3.b.1.b**, **Section 5.09.2.j** and **Section 8.02.2** of the Zoning Bylaw and makes the following findings pursuant to **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Therefore, the Board voted unanimously to grant all the special permit relief requested with the following conditions:

1. Prior to the issuance of a building permit, a final landscaping plan showing landscaping and hardscape materials, shall be submitted to the Planning Board for review and approval. The plan shall indicate the removal of the existing drive and curb cut. Before the landscaping plan is submitted to the Planning Board, the petitioner is encouraged to discuss the Plan with his neighbor, Mr. Nimick, to seek his input with the understanding that the neighbor shall not have approval authority.
2. Prior to the issuance of a building permit, final elevations of the addition, garage and deck shall be reviewed and approved by the Preservation Commission.
3. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the addition, garage and deck, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: May 31, 2007

A True Copy:

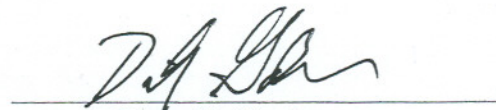
ATTEST



Patrick J. Ward

Clerk,

Board of Appeals

  
Diane R. Gordon